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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Paul Grady,

10 Plaintiff,

11 v.

12 Sunbeam Motel, et al.,

13 Defendants.  
14

No. CV-21-00493-TUC-RM

**ORDER**

15 On December 2, 2021, Plaintiff Paul Grady filed a Complaint against Sunbeam  
16 Motel and an unknown party named as “Betty, manager.” (Doc. 1.) The Court granted  
17 leave to proceed in forma pauperis and dismissed the Complaint with leave to amend on  
18 screening, finding that Plaintiff had failed to state a claim upon which relief could be  
19 granted because he did not allege facts showing that Defendants had violated Title III of  
20 the Americans with Disabilities Act (“ADA”). (Doc. 6.) On February 4, 2022, Plaintiff  
21 filed an Amended Complaint (Doc. 7), which the Court also dismissed with leave to  
22 amend, finding that Plaintiff failed to state an ADA claim because he had not alleged that  
23 Defendants denied him an accommodation because of his disability (Doc. 9). Plaintiff has  
24 now filed a Second Amended Complaint (“SAC”). (Doc. 14.) The Court will dismiss the  
25 SAC without leave to amend.

26 **I. Statutory Screening of Complaints**

27 The Prison Litigation Reform Act states that a district court “shall dismiss” an *in*  
28 *forma pauperis* complaint if, at any time, the court determines that the action “is frivolous

1 or malicious” or that it “fails to state a claim on which relief may be granted.” 28 U.S.C.  
2 § 1915(e)(2). “[S]ection 1915(e) applies to all *in forma pauperis* complaints, not just  
3 those filed by prisoners.” *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc);  
4 *see also Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (per curiam).

5 A pleading must contain a “short and plain statement of the claim *showing* that the  
6 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does  
7 not demand detailed factual allegations, “it demands more than an unadorned, the-  
8 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
9 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
10 conclusory statements, do not suffice.” *Id.*

11 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
12 claim to relief that is plausible on its face.’” *Ashcroft*, 556 U.S. at 678 (quoting *Bell*  
13 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible “when the  
14 plaintiff pleads factual content that allows the court to draw the reasonable inference that  
15 the defendant is liable for the misconduct alleged.” *Id.* “Determining whether a  
16 complaint states a plausible claim for relief [is] . . . a context-specific task that requires  
17 the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.  
18 Thus, although a plaintiff’s specific factual allegations may be consistent with a  
19 constitutional claim, a court must assess whether there are other “more likely  
20 explanations” for a defendant’s conduct. *Id.* at 681.

21 As the United States Court of Appeals for the Ninth Circuit has instructed, courts  
22 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342  
23 (9th Cir. 2010). A complaint filed by a *pro se* litigant “must be held to less stringent  
24 standards than formal pleadings drafted by lawyers.” *Id.* (internal quotation omitted).  
25 Nevertheless, “a liberal interpretation of a civil rights complaint may not supply essential  
26 elements of the claim that were not initially pled.” *Ivey v. Bd. of Regents*, 673 F.2d 266,  
27 268 (9th Cir. 1982).

28 If the Court determines that a pleading could be cured by the allegation of other

1 facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal  
2 of the action. *See Lopez*, 203 F.3d at 1127-29.

## 3 **II. The Second Amended Complaint Fails to State a Claim for Relief**

4 The SAC states, in relevant part, that (1) plaintiff is disabled and takes medication  
5 for his disability; (2) he was locked out of his motel room by Betty, whom he has  
6 identified as “Betty Boyle,” after he paid for the room; (3) Ms. Boyle was aware of  
7 Plaintiff’s disability because she delivered his medication to his room; and (4) Ms. Boyle  
8 harmed Plaintiff by separating him from his medication. (Doc. 14.) Plaintiff’s SAC  
9 alleges the ADA as a basis for jurisdiction over Plaintiff’s claims. However, the SAC  
10 fails to allege facts showing that Defendants denied him an accommodation because of  
11 his disability.

12 “Leave to amend need not be given if a complaint, as amended, is subject to  
13 dismissal.” *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 538 (9th Cir. 1989).  
14 The Court’s discretion to deny leave to amend is particularly broad where Plaintiff has  
15 previously been permitted to amend his complaint. *Sisseton-Wahpeton Sioux Tribe v.*  
16 *United States*, 90 F.3d 351, 355 (9th Cir. 1996). Repeated failure to cure deficiencies is  
17 one of the factors to be considered in deciding whether justice requires granting leave to  
18 amend. *Moore*, 885 F.2d at 538.

19 Plaintiff has made three efforts at crafting a viable complaint and appears unable  
20 to do so despite specific instructions from the Court. Specifically, Plaintiff failed to  
21 address or correct the exact error that was the basis for dismissal of his Amended  
22 Complaint. Therefore, the Court finds that further opportunities to amend would be futile  
23 and, in its discretion, will dismiss Plaintiff’s SAC without leave to amend.


24 Accordingly,

25 **IT IS ORDERED** that the Second Amended Complaint (Doc. 14) is **dismissed**  
26 **without leave to amend** for failure to state a claim.

1           **IT IS FURTHER ORDERED** that the above-captioned action is **dismissed**  
2 **without prejudice**. The Clerk of Court shall enter judgment accordingly and close this  
3 case.

4           Dated this 25th day of April, 2022.

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Honorable Rosemary Márquez  
United States District Judge